

SBCivil Writ Petition No.4897/2002

LRS. Of Late Harji
V.
State of Rajasthan & Ors.

Date of Order :: 19th April, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Rajesh Joshi, for the petitioners.
Mr. R.N.Upadhyay, for the respondents.

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By order dated 13.4.2006 this petition for writ was dismissed qua the petitioners No.2 to 9 being withdrawn. The respondent No.3 Shri Bhanwararam was also ordered to be deleted from the array of the respondents in view of the fact that petitioner No.1 (now the sole petitioner) has not claimed any relief against him. The petition, therefore, is now only to adjudicate the claim made by the petitioner No.1.

The facts of the case in brief are that petitioner Harji much back in the year 1970 took a loan of Rs.16,100/- from respondent Jodhpur Primary Land Mortgage Bank Ltd., Jodhpur for construction of tubewell. While taking loan the petitioner mortgaged agricultural land in favour of the respondent bank. Since the petitioner failed to repay the loan the land which was mortgaged with the bank was put for auction but nobody came forward to purchase it, therefore, the land was entered in the name of the respondent bank under Rule 97 of the Rajasthan Cooperative Societies

Rules, 1966 (hereinafter referred to as "the Rules of 1966"). The respondent No.4, Rajasthan Rajya Sahkari Bhoomi Vikas Bank Ltd. by various letters instructed the respondent No.2 to release the petitioner's land by charging the outstanding amount. The petitioner was ready and willing for it but the land was not released, therefore, the petitioner preferred a writ petition before this Court and the same was registered as SBCivil Writ Petition No.4548/1991 (Harji & Ors. v. State & Ors.). In the aforesaid writ petition an interim order was passed by the Court in following terms:-

"In the meanwhile, the petitioners shall not be dispossessed from the land in dispute, if they have not been dispossessed upto now and if at all the land in dispute is subject to any auction, such auction shall not be finalised without the permission of the Court."

The land that was placed on mortgage though was entered in the name of the respondent bank but it remained under possession of the petitioners and it is admittedly still under possession of the petitioner. The writ petition preferred by the petitioner being No.4548/1991, by order dated 10.7.2002 was disposed of with a direction to the Registrar, Cooperative Societies, to decide the dispute between the parties within a period of two months after providing an opportunity of hearing to the concerned parties. In

pursuant to the order dated 10.7.2002 the Registrar, Cooperative Societies, by an order dated 18.11.2002 decided the issue referred to it by holding that the land in question has already been entered in the name of the bank, therefore, now it cannot be transferred to the petitioners. Being aggrieved by the same this petition for writ is preferred by the petitioner.

This Court while issuing notice to show cause to the respondents pleased to grant an interim order on 12.12.2002 in following terms:-

“Issue notice of stay petition also.
Meanwhile, petitioner shall deposit all the outstanding arrears against him alongwith interest and cost, if any, to respondents.”

The petitioner in pursuant to the interim order passed by this Court deposited the entire outstanding with the respondent bank and admittedly no amount is now due with the respondent bank against the petitioner.

It is contended by counsel for the respondent bank that though the entire amount has been accepted by the bank but the land in question cannot be transferred as the same has already been entered in the name of the bank.

I failed to understand the approach of the respondent bank to keep the land in question with it in spite of the fact that entire outstanding amount with interest has already been deposited with it by the petitioner who is a bonafide agriculturist. The bank is not going to face any loss as whatever amount claimed by it has already been deposited by the petitioner. On the contrary, the petitioner who is a bonafide agriculturist and is also a member of Scheduled Caste will loose his valuable land meaning thereby he will be deprived of his livelihood. The equity requires that the land in question should be transferred and entered in the name of the petitioner.

Accordingly, this petition for writ is allowed. The order impugned dated 18.11.2002 passed by the Registrar, Cooperative Societies, is quashed. The respondent bank is directed to release the land in dispute in favour of the petitioner and appropriate entries in this regard be made in revenue records.

No order to cost.

(GOVIND MATHUR),J.

kkm/ps.